

**45A.190 Performance bond and payment bond -- Recommendations on whether performance bond should be required -- Audit of contract performance -- Release from performance bond.**

- (1) As used in this section, "agency contract administrator" means the state agency employee responsible for the administration of a contract.
- (2) When a construction contract is awarded in an amount in excess of forty thousand dollars (\$40,000), the following bonds shall be furnished to the Commonwealth, and shall be binding on the parties upon the award of the contract:
  - (a) A performance bond satisfactory to the Commonwealth executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the Commonwealth, in an amount equal to one hundred percent (100%) of the contract price as it may be increased; and
  - (b) A payment bond satisfactory to the Commonwealth executed by a surety company authorized to do business in the Commonwealth, or otherwise supplied, satisfactory to the Commonwealth, for the protection of all persons supplying labor and material to the contractor or his subcontractors, for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the original contract price.
- (3) When any contract in an amount in excess of forty thousand dollars (\$40,000) for commodities, supplies, equipment, or services of any kind, or when a contract for construction services costing forty thousand dollars (\$40,000) or less is proposed for presentation to vendors or contractors, the agency contract administrator shall evaluate whether a performance bond should be required in the procurement document, and make his recommendation to the purchasing agency. The agency contract administrator shall note the reason that a performance bond is or is not recommended and his notation shall be a part of the permanent record relating to the contract. If a performance bond is required, the requirement shall be included in the invitation to bid, request for proposal, or other procurement document. The agency contract administrator shall make audits of the performance of contracts upon completion of one-third (1/3) of the contract and upon completion of two-thirds (2/3) of the contract. For contracts taking longer than one (1) year to complete, audits of performance shall be conducted at least annually. Before a vendor is released from a performance bond, the agency contract administrator shall review the audits of performance, make a final performance review, and promptly determine whether, in his or her opinion, the vendor has fully complied with the terms of the contract. The opinion of the agency contract administrator shall be made in writing or electronically, set forth the reasons for his or her opinion regarding compliance or noncompliance, and be signed by the agency contract administrator. This opinion may have an electronic signature. The using agency head shall, after consideration of the performance audits, the final performance review, and the opinion of the agency contract administrator regarding compliance or noncompliance, determine whether to recommend to the purchasing agency that the performance bond be released or whether a claim should be made against the performance bond. This determination of the using agency head shall be in writing,

signed by the using agency head, and forwarded to the purchasing agency. This determination may have an electronic signature and be transmitted electronically. If the recommendation of the using agency is not followed by the purchasing agency, the purchasing agency shall place a statement in the file explaining why it is not followed.

- (4) Nothing in this section shall be construed to limit the authority of the Commonwealth to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (2) or (3) of this section.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 72, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 324, sec. 1, effective July 15, 1998. -- Created 1978 Ky. Acts ch. 110, sec. 38, effective January 1, 1979.